Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:STX:AUS:TL-N-2723-00
TRSealy

date: JUN 07 2000

to: Chief Compliance Officer, Midstates Region
Attn: Dave Stubblefield Stop 4200 MSRO

from: District Counsel, South Texas District Stop 2000 AUS

subject: **Foreign Owned U.S. Businesses Project**
Response to Carol Buck's April 27, 2000, Memorandum

This memorandum responds to Carol Buck's memorandum to Dave Stubblefield dated April 27, 2000.

Regarding the Foreign Company X example, we assume (in addition to the facts stated) that this hypothetical foreign corporation has an office or fixed place of business in the United States, and that it files its federal income tax returns on the basis of the calendar year. Thus, it has the same filing deadline under I.R.C. § 6072 as a domestic corporation - the 15th day of March following the close of the taxable calendar year. Carol is therefore correct that its Form 1120F return would be considered timely (for purposes of securing deductions and credits) if filed before September 15, 1999.

We also concur that (for calendar-year foreign corporations) 1997 is the latest year that the Internal Revenue Service could disallow deductions and credits on the basis of I.R.C. § 882(c) and Treas. Reg. § 1.882-4 claimed by corporations in X's position.

We do not believe that the due dates in Treas. Reg. § 1.882-4 consider extensions. The regulation's language is very explicit - "18 months of the due date as set forth in Section 6072 and the regulations under that section ... ." I.R.C. § 6072 and its regulations only discuss original due dates for returns. Extensions for filing are treated in I.R.C. § 6081 and its regulations. Thus, by mentioning only the due date under I.R.C. § 6072, and by omitting any mention of extensions, the regulation makes clear that the 18-month deadline is not extendable. Therefore, you would not be required to add any time to the 18-month period in the event the taxpayer was granted extensions of time to file its return.

If:

1. X did not file a federal income tax return for 1996, and

2. 1997 is not the first taxable year for which X's return is required to be filed,

Then in order for X to claim deductions and credits, its return must be filed by the earlier of the following:

a. 18 months following the due date provided by I.R.C. § 6072 and its regulations (in other words, September 15, 1999), or

b. The date the Internal Revenue Service sends a notice to the foreign corporation advising it that the return has not been filed and that no deductions or credits (except for withholding and gasoline tax credits) may be claimed.

In other words, the Internal Revenue Service can in effect "cut off" the 18-month period in this situation by sending X the described notice. Of course, if X files its 1997 return by the I.R.C. § 6072 due date (determined with any valid extensions), then the return would be timely and X could claim deductions and credits. For example, if X did not file on March 15, 1998, but secured from the District Director a valid six-month extension to file to September 15, 1998, filing its return by the latter date would preserve its right to claim deductions and credits even if we had sent a cut-off notice prior to it. But if there were not a valid extension, and we sent the cut-off notice after March 15, 1998, and before X filed a return, then X would not be able to claim deductions and credits even if it filed a return before September 15, 1999.

Carol is also correct that the 18-month period does not begin to run for a foreign corporation without an office or fixed place of business in the United States until the 15th day of the sixth month following the close of the taxable year, since this is the I.R.C. § 6072 due date for such corporations.

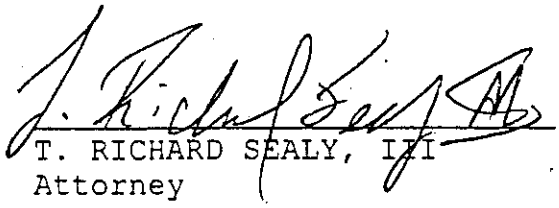
Regarding the question about the Form 8833, please review the March 27, 2000, Field Service Advice ("FSA"), pp. 6 and 16. The FSA concludes that a Form 1120F attached to a Form 8833 should be considered a protective return under Treas. Reg. § 1.882-4(a)(3). But, it also states that a mere Form 8833 unaccompanied by a Form 1120F would not qualify.

Thus, a Form 1120F filed without a Form 8833 could be considered a return, a Form 8833 without a Form 1120F should not be. In our opinion, filing a lone Form 8833 would not commence

the running of the period of limitations, but filing an 1120F would, even without a required Form 8833. A Form 8833 in itself, even if properly completed, does not contain sufficient information to constitute a return, or otherwise meet the test of return validity that has been developed by the courts over the years. See Beard v. Commissioner, 82 T.C. 766 (1984), aff'd per curiam 793 F.2d 139 (6th Cir. 1986). But a Form 1120F, even without a required Form 8833, would almost always qualify as a return for purposes of the statute of limitations.

This concludes our advice. Please contact the undersigned at (512) 499-5668 with any questions. We are also forwarding this advice and the April 27, 2000, memorandum to the National Office for post-review.

LEWIS J. HUBBARD, JR.
District Counsel

By: 
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